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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
(THE HON. WILLIAM Q. HAYES)**

**UNITED STATES OF AMERICA,  
Plaintiff,**

**v.**

**JOSE MARTINEZ GONZALEZ (2),  
Defendant.**

**CASE NO. 08cr2125-WQH**

**DATE: August 4, 2008**

**TIME: 2:00 p.m.**

**NOTICE OF MOTIONS and MOTIONS TO:**

**1) COMPEL DISCOVERY;**

**2) SUPPRESS EVIDENCE**

**3) JOIN in CO-COUNSEL'S PREVIOUSLY  
FILED PRE-TRIAL MOTIONS; and for**

**4) LEAVE TO FILE FURTHER MOTIONS**

**TO: KAREN P. HEWITT, or current UNITED STATES ATTORNEY, AND  
JOSEPH J.M. ORABONA, or current ASSISTANT UNITED STATES ATTORNEY:**

PLEASE TAKE NOTICE that on August 4 at 2:00 p.m., or as soon  
thereafter as counsel may be heard, the defendant, Jose Martinez  
Gonzalez, by and through his counsel, Holly S. Hanover, will ask this  
Court to enter an order granting the motions listed below.

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**MOTIONS**

The Defendant, Jose Martinez Gonzalez, by and through his attorney, Holly S. Hanover, pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law and local rules, hereby moves this Court for an order to:

- 1) Compel Discovery;
- 2) Suppress Evidence
- 3) Join in Co-Counsel's previously filed Pretrial motions;
- and to
- 4) Grant leave to file further motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, and any and all other materials that may come to this Court's attention at the time of the hearing on these motions.

**Respectfully submitted,**

**Dated: July 21, 2008**

s/ Holly S. Hanover  
**Attorney for Mr. Jose Martinez Gonzalez**  
**E-mail: Netlawyr@aol.com**

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 Attorney for Defendant, Jose Martinez Gonzalez

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 (THE HON. WILLIAM Q. HAYES)**

**UNITED STATES OF AMERICA,**  
**Plaintiff,**  
  
**v.**  
  
**JOSE MARTINEZ GONZALEZ (2),**  
**Defendant.**

**CASE NO. 08cr2125-WQH**  
  
**DATE: August 4, 2008**  
**TIME: 2:00 p.m.**  
  
**STATEMENT OF FACTS AND  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT  
 OF DEFENDANT'S MOTION**

**I.**

**STATEMENT OF FACTS**

The following statement of facts is based, in part, on the indictment, the complaint and initial statement of facts and other information provided by the United States Attorney's office. Counsel has received a few hundred pages of discovery thus far. The facts set forth in these motions are subject to amplification and/or modification at the time these motions are heard and are not adopted by the defense.

On Monday, June 9, at approximately 8:40 p.m., border patrol agent Steven F. Pitts saw a green Jeep Cherokee pulled over to the side of the highway. Agent Pitts then observed the jeep begin to drive along the road toward him. It is believed to be in dispute as to whether the lights in the vehicle were on or off when the vehicle was driving along the road. Agent Pitts called agent "Davenport" whom was apparently driving ahead of the Cherokee on SR-94, and agent Davenport turned his vehicle around to intercept the Cherokee.

Agent Davenport claims that the vehicle was being driven at a high rate of speed, and decelerated quickly when it approached his vehicle<sup>1</sup>. Agent Davenport then turned around again and followed the Cherokee while calling in a to check the status of the vehicle (a vehicle registration check, a 72-hour lane check, and a stolen vehicle check). He was about to stop the vehicle when it pulled over on its own. Other agents arrived, and rounded up individuals from the vehicle and placed them all under arrest at approximately 9:40 p.m.

Mr. Martinez Gonzalez was one of the occupants of the vehicle. He was arrested and ultimately charged with violating 8 U.S.C. §1324. He was not interviewed until approximately 4:04 a.m. the next morning, when he denied acting as a foot guide, and claimed he was to pay for his own passage. He remains in custody while the case proceeds.

## II.

### **THE COURT SHOULD COMPEL THE GOVERNMENT TO PRODUCE DISCOVERY**

Jose Martinez Gonzalez makes the following discovery motion pursuant to Rule 12(b)(4) and Rule 16. This request is not limited to those items that the prosecutor has actual knowledge of, but rather includes all discovery listed below that is "in the possession, custody, or control of any federal agency participating in the same investigation of the defendant." United States v. Bryan, 868 F.2d 1032, 1036 (9th Cir.), cert. denied, 493 U.S. 858 (1989).

***Mr. Martinez Gonzalez may eventually also request a detailed list of specific items that may not yet have been produced, and is requesting***

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<sup>1</sup> Mr. Medina is accused of driving the vehicle, and within motions filed by Mr. Medina, he disputes that he was driving with the lights off or doing anything illegal when the vehicle was pulled over. (See declaration filed previously by Mr. Medina) Mr. Martinez Gonzalez was not in any position to see the driver or know if the lights on or what speed the vehicle was travelling, so he must rely on the declaration of Mr. Medina.

1 *that the government turn over and allow his counsel to view and inspect*  
 2 *all items at the earliest possible date. He also specifically requests*  
 3 *that the government retain, preserve and prevent from destruction, all*  
 4 *evidence seized in this case (Including any cell phones or other*  
 5 *physical items seized) so that counsel may have the opportunity to re-*  
 6 *test it and have it's own expert examine it if necessary.*

7 (1) Mr. Martinez Gonzalez' Statements. The government must  
 8 disclose: (1) copies of any written or recorded statements made by Mr.  
 9 Martinez Gonzalez; (2) copies of any written record containing the  
 10 substance of any statements made by Mr. Martinez Gonzalez; and (3) the  
 11 substance of any statements made by Mr. Martinez Gonzalez which the  
 12 government intends to use, for any purpose, at trial. **This includes any**  
 13 **hand-written notes made by agents and any co-conspirator's or material**  
 14 **witness alleged statements as well, as well as any video or audio**  
 15 **recorded statements.** See Fed. R. Crim. P. 16(a)(1)(A). Mr. Martinez  
 16 Gonzalez also specifically requests that the circumstances surrounding  
 17 any alleged waiver of his right to counsel and right to remain silent  
 18 be disclosed as well.

19 Statements of Others; the defense moves for an order directing the  
 20 government to permit the defense to inspect and copy any statements of  
 21 any co-defendant or co-conspirator, material witness, or confidential  
 22 informant that the government intends to offer against defendant under  
 23 Fed. R. Evid. 801(d)(2)(E), including, but not limited to:

- 24 (A) Relevant written or recorded statements made by any co-  
 25 defendant or claimed co-conspirator, indicted or  
 26 unindicted, that are in the government's possession,  
 custody, or control, or that through due diligence may  
 become known to the government; and
- 27 (B) The substance of any oral statement that the government  
 28 intends to offer in evidence at the trial of this matter  
 made by any co-defendant or claimed co-conspirator,

1 indicted or unindicted, before or after arrest, in  
2 response to interrogation by any person known to the  
3 declarant to be a government agent.

4 (2) Mr. Martinez Gonzalez's Prior Record. Mr. Martinez Gonzalez  
5 requests complete disclosure of his prior record if one exists. See  
6 Fed. R. Crim. P. 16(a)(1)(B).

7 (3) Documents and Tangible Objects. Mr. Martinez Gonzalez  
8 requests the opportunity to inspect, copy, and photograph all documents  
9 and tangible objects which are material to the defense or intended for  
10 use in the government's case-in-chief or were obtained from or belong  
11 to her. See Fed. R. Crim. P. 16(a)(1)(C).

12 (4) Reports of Scientific Tests or Examinations. Mr. Martinez  
13 Gonzalez requests the reports of all tests and examinations which are  
14 material to the preparation of the defense or are intended for use by  
15 the government at trial. See Fed. R. Crim. P. 16(a)(1)(D). Mr.  
16 Martinez Gonzalez notes that no fingerprint analyses have been produced.  
17 If such analyses exist, Mr. Martinez Gonzalez requests a copy.

18 (5) Expert Witnesses. Mr. Martinez Gonzalez requests the name and  
19 qualifications of any person that the government intends to call as an  
20 expert witness. See Fed. R. Crim. P. 16(a)(1)(E). Mr. Martinez  
21 Gonzalez requests written summaries describing the bases and reasons for  
22 the expert's opinions. See id. This request applies to any fingerprint  
23 and handwriting experts that the government intends to call.

24 (6) Brady Material. Mr. Martinez Gonzalez requests all documents,  
25 statements, agents' reports, and tangible evidence favorable to the  
26 defendant on the issue of guilt or punishment. See Brady v. Maryland,  
27 373 U.S. 83 (1963), Williams v. Taylor, 120 S.Ct. 1479 (2000), Strickler  
28 v. Greene, 527 U.S. 263 (1999).

Impeachment evidence falls within the definition of evidence

1 favorable to the accused, and therefore Mr. Martinez Gonzalez requests  
2 disclosure of any impeachment evidence concerning any of the  
3 government's potential witnesses, including prior convictions and other  
4 evidence of criminal conduct. See United States v. Bagley, 473 U.S. 667  
5 (1985); United States v. Agurs, 427 U.S. 97 (1976); Kyles v. Whitley,  
6 514 U.S. 419 (1995).

7 In addition, Mr. Martinez Gonzalez requests any evidence tending  
8 to show that a prospective government witness: (I) is biased or  
9 prejudiced against the defendant; (ii) has a motive to falsify or  
10 distort his or his testimony; (iii) is unable to perceive, remember,  
11 communicate, or tell the truth; or (iv) has used narcotics or other  
12 controlled substances, or has been an alcoholic. ***This would***  
13 ***specifically include any and all reports involving any investigations***  
14 ***and grand jury testimony pertaining to the investigating and arresting***  
15 ***agents, material witnesses, or confidential sources in this case.***

16 (7) Request for Preservation of Evidence. Mr. Martinez Gonzalez  
17 specifically requests the preservation of all physical or documentary  
18 evidence that may be destroyed, lost, or otherwise put out of the  
19 possession, custody, or care of the government and which relate to the  
20 arrest or the events leading to the arrest in this case.

21 (8) Any Proposed 404(b) Evidence. "[U]pon request of the accused,  
22 the prosecution . . . shall provide reasonable notice in advance of  
23 trial . . . of the general nature" of any evidence the government  
24 proposes to introduce under Rule 404(b). Fed. R. Evid. 404(b). Mr.  
25 Martinez Gonzalez requests such notice as soon as possible, in order to  
26 allow for adequate trial preparation.

27 (9) Witness Addresses. Mr. Martinez Gonzalez requests the name  
28 and last known address of each prospective government witness. He also

1 requests the name and last known address of every witness to the crime  
2 or crimes charged (or any of the overt acts committed in furtherance  
3 thereof) who will not be called as a government witness.

4 (10) Jencks Act Material. Mr. Martinez Gonzalez requests  
5 production in advance of trial of all material discoverable pursuant to  
6 the Jencks Act, 18 U.S.C. § 3500. This production will avoid needless  
7 delays at pretrial hearings and at trial. ***This request includes any***  
8 ***"rough" notes taken by the agents in this case;*** these notes must be  
9 produced pursuant to 18 U.S.C. § 3500(e)(1). ***This request also includes***  
10 ***production of transcripts of the testimony of any witness before the***  
11 ***grand jury. Counsel would like access to all witnesses' last known***  
12 ***address so an attempt can be made to contact them. See*** 18 U.S.C. §  
13 3500(e)(3).

14 (11) Residual Request. Mr. Martinez Gonzalez intends by this  
15 discovery motion to invoke his rights to discovery to the fullest extent  
16 possible under the Federal Rules of Criminal Procedure and the  
17 Constitution and laws of the United States. Mr. Martinez Gonzalez  
18 requests that the government provide him and his attorney with the above-  
19 requested material sufficiently in advance of trial.

20 (12) Government Examination of Law Enforcement Personnel Files Mr.  
21 Martinez Gonzalez requests that the government examine the personnel  
22 files and any other files within its custody, care or control, or which  
23 could be obtained by the government, for all testifying witnesses. Mr.  
24 Martinez Gonzalez requests that these files be reviewed by the  
25 government attorney for evidence of perjurious conduct or other conduct  
26 like dishonesty, or any other material relevant to impeachment, or any  
27 information that is exculpatory, pursuant to its duty under United  
28 States v. Henthorn, 931 F.2d 29 (9th Cir. 1991).



1 The obligation to examine files arises by virtue of the defense  
2 making a demand for their review: the Ninth Circuit in Henthorn  
3 remanded for in camera review of the agents' files because the  
4 government failed to examine the files of agents who testified at trial.  
5 This Court should therefore order the government to review all such  
6 files for all testifying witnesses and turn over any material relevant  
7 to impeachment or that is exculpatory to Mr. Martinez Gonzalez prior to  
8 trial. Mr. Martinez Gonzalez specifically requests that the prosecutor,  
9 not the law enforcement officers, review the files in this case. The  
10 duty to review the files, under Henthorn, should be the prosecutor's and  
11 not the officers'. Only the prosecutor has the legal knowledge and  
12 ethical obligations to fully comply with this request.

### 13 III.

#### 14 THE COURT SHOULD SUPPRESS EVIDENCE SEIZED IN VIOLATION OF MR. 15 MARTINEZ GONZALEZ' RIGHTS

##### 16 A. This Court Should Suppress Evidence Obtained in Violation of the 17 Fourth Amendment.

18 The Fourth Amendment's prohibition of unreasonable searches and  
19 seizures extends to seizures of the person and brief investigatory stops  
20 of vehicles. See United States v. Brignoni-Ponce, 422 U.S. 873, 878  
21 (1975). An officer may not detain a motorist without "a particularized  
22 and objective bases for suspecting the particular person stopped of  
23 criminal activity." United States v. Cortez, 449 U.S. 411, 417-418  
24 (1981). This "objective basis, or 'reasonable suspicion' must consist  
25 of 'specific, articulable facts which, together with objective and  
26 reasonable inferences, form the basis for suspecting that the particular  
27 person detained is engaged in criminal activity.'" United States v.  
28 Garcia-Camacho, 53 F.3d 244, 246 (9th Cir. 1995) (citations omitted);

1 accord United States v. Sigmond-Ballesteros, 285 F.3d 1117, 1120 (9th  
2 Cir. 2002) (finding that district court erred in finding that vehicle  
3 stop was unconstitutional).

4 In the instant case, the arresting officer did not have reasonable  
5 suspicion to stop the vehicle in this case. The driver of the vehicle  
6 claims that he was driving pursuant to all California vehicle codes,  
7 with the lights on, and was not speeding or giving agents any cause to  
8 pull the vehicle over. The agent ran a 72 hour lane check to see if the  
9 Cherokee had crossed into the United States, was reported stolen, or  
10 wasn't current on its registration, and it appears everything was in  
11 order, or the agent would have put any problems with this license plate  
12 check in his report.

13 Because the agents did not have reasonable suspicion to pull the  
14 Cherokee over, the subsequent arrest and detention of Mr. Martinez  
15 Gonzalez was unconstitutional.

16 **B. All Statements Given Buy the Material Witnesses and Jose Martinez**  
17 **Gonzalez Were the Fruits of the Poisonous Tree and Should Be**  
18 **Suppressed.**

19 All evidence and the fruits of the unconstitutional stop and  
20 detention (e.g., statements given by the material witnesses and Mr.  
21 Martinez Gonzalez), all evidence seized from them and from the Cherokee)  
22 must be suppressed. See Wong Sun v. United States, 371 U.S. 471 (1963);  
23 see also United States v. Romero-Bustamente, 337 F.3d 1104 (9th Cir.  
24 2003) (finding Fourth Amendment violation, suppressing alien material  
25 witnesses, and requiring dismissal of indictment).

26 **C. This Court Should Conduct An Evidentiary Hearing.**

27 Right now, there seems to be a factual dispute about the  
28 circumstances surrounding the stop of the vehicle. If the Court wishes  
additional inquiry into the factual situation, an evidentiary hearing

1 could shed additional light in the determination about whether or not  
2 agents had sufficient legal cause to make such a stop of the vehicle.

3 **IV.**

4 **MR. MARTINEZ GONZALEZ REQUESTS PERMISSION TO JOIN IN MOTIONS FILED BY**  
5 **MR. MEDINA**

6 To the extent this request is not redundant, Mr. Martinez Gonzalez  
7 respectfully requests to join in motions filed by counsel for Mr.  
8 Medina. Specifically, to Suppress Evidence, the Produce the Grand Jury  
9 Transcripts, and to Preserve and Inspect Evidence Seized.

10 **V.**

11 **THE COURT SHOULD GRANT LEAVE TO FILE FURTHER MOTIONS**

12 In order to properly present additional pretrial motions, Mr.  
13 Martinez Gonzalez needs more information which may be provided through  
14 counsel's discovery request. As more information comes to light and as  
15 additional research and/or investigation is completed, additional  
16 substantive motions may be necessary. Accordingly, Mr. Martinez  
17 Gonzalez requests that the Court permit him to file further motions  
18 before trial.

19 **VI.**

20 **CONCLUSION**

21 For the foregoing reasons, Mr. Martinez Gonzalez respectfully  
22 requests that the Court grant his motions.

23 **Respectfully submitted,**

24  
25 **Dated: July 21, 2008**

26 s/ Holly S. Hanover  
27 Holly S. Hanover  
28 Attorney for Jose Martinez Gonzalez  
E-mail: Netlawyr@aol.com

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
(THE HON. WILLIAM Q. HAYES)**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 08cr2125-WQH</b>
<b>Plaintiff,</b>	)	
	)	<b>DATE: August 4, 2008</b>
<b>v.</b>	)	<b>TIME: 2:00 p.m.</b>
	)	
<b>JOSE MARTINEZ GONZALEZ (2),</b>	)	<b>CERTIFICATE OF SERVICE</b>
<b>Defendant.</b>	)	
_____	)	

**IT IS HEREBY CERTIFIED THAT:**

I, Holly Hanover, am a citizen of the United States and am at least 18 years of age. My business address is 1016 La Mesa Ave., Spring Valley, CA, 91977

I have cause the service of the Motion for Discovery et. al. in on this case. The following recipients are currently on the list to receive e-mail notices for this case and have thus been served electronically at the following e-mail addresses:

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Respectfully submitted,

**Dated: July 21, 2008**

s/ *Nolly Hancock*  
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